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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket No. 92-235
	)	
Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services	)	

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Federal Communications Commission
Office of Secretary

To: The Commission

OPPOSITION AND COMMENTS

Respectfully submitted,

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SUMMARY

The Personal Communications Industry Association ("PCIA"), respectfully hereby respectfully submits its Opposition and Comments to the Petitions for Reconsideration filed in the above-captioned proceeding.

It is clear from the various documents filed in this proceeding that the Commission's consensual trunking rules are confusing. Further, many industry members express concern with the Commission's consent rules and suggest a variety of means to make such consent unnecessary or easier to obtain. As a result, the Commission should heed the request of the industry to clarify and simplify these rules.

PCIA proposes that the Commission adopt a variation of the proposal submitted by Small Business in Telecommunications. PCIA proposes that the Commission permit existing licensees to request developmental trunking status on the specific channels for which they are already licensed. The request must have the concurrence of a certified frequency advisory committee for the frequency and should be served on co-channel licensees. In this manner, co-channel licensees will be aware of which licensees are trunking and will be able to determine the source of any interference. During this period of developmental authorization, no new users would be added to the channel, but existing licensees could also seek developmental trunking authority.

At the end of the one-year developmental period, licensees should be able to request permanent authority for trunked

operation. Again, the request should be with the consent of an applicable frequency advisory committee and should be served on co-channel licensees.

PCIA requests that the Commission again reject the Petitions filed by frequency coordinating committees seeking reversal or modification of the new consolidated Pool rules. The Petitioners merely reiterate positions advanced many times over the past five years and have failed to raise any valid rationale for Commission reconsideration of the issue.

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To: The Commission

OPPOSITION AND COMMENTS

The Personal Communications Industry Association ("PCIA"), through counsel and pursuant to Section 1.419 of the Commission's Rules, respectfully hereby respectfully submits its Opposition and Comments to the Petitions for Reconsideration filed in the above-captioned proceeding.

I. OPERATION IN TRUNKED MODE

It is clear from the various documents filed in this proceeding that the Commission's consensual trunking rules are confusing.[1] Further, many industry members express concern with the Commission's consent rules and suggest a variety of means to make such consent unnecessary or easier to obtain.[2] As a result,

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[1] See, for example, the filings of the American Mobile Telecommunications Association ("AMTA") at 3; Kenwood Communications Company at 4 and 11.

[2] See, for example, the filings of the Industrial Telecommunications Association ("ITA") at 7; Utilities Telecommunications Council ("UTC") at 2-4; Manufacturers Radio Frequency Advisory Committee ("MRFAC") at 4; AMTA at 6.

the Commission should heed the request of the industry to clarify and simplify these rules.

PCIA agrees with those parties that request that the Commission use a service vs. interference contour to determine which co-channel licensees must provide concurrence.[3] Similar rules have worked well in the 800 MHz and 900 MHz bands. However, PCIA believes that ITA's suggestion that the contour calculation be performed for the interference and service contours from both licensees both ways is too stringent. The Commission previously reviewed a similar proposal in PR Docket No. 93-60 and decided it was unnecessary.[4] PCIA believes that the same rationale applies here.

Further, PICA does not support Ericsson, Inc.'s recommendation that the Commission permit trunking if a majority of co-channel users consent to the trunking. This proposal presents numerous problems. First, it is unclear as to what "majority" would mean, as it could mean a majority of the licensees, or a majority of mobile units. More importantly, PCIA believes that existing licensees should not be forced to suffer interference without their consent.[5] This proposal appears to be contrary to the Commission's

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[3]MRFAC at 4; AMTA at 10; Kenwood at 10.

[4]Report and Order, PR Docket No. 93-60, FCC 93-450, released October 8, 1993 at para. 12.

[5]Existing users suffering from interference in this context is different than the "developmental authorization" discussed below. Since the developmental authorization is secondary, existing co-channel users which actually experience interference will have a procedure to eliminate the interference. In contrast, Ericsson's proposal would give an applicant seeking a trunking license a

goal in this proceeding to permit existing users to continue to use their existing equipment.

PCIA is more intrigued by the concept advanced by Small Business in Telecommunications ("SBT"). SBT proposes that the Commission authorize trunking on a secondary, developmental basis for all existing stations, with no new users being added during the developmental period. SBT proposes that at the end of the developmental period, the developmental licensees would be eligible for primary licensing if all interference complaints have been resolved.[6]

PCIA believes that the SBT proposal, which has the effect of freezing all licensing on a channel for least one year, is unacceptable. However, a slightly modified version of SBT's proposal may have merit. PCIA believes that an automatic developmental license should not be granted to all existing licensees. This would create a situation where co-channel users would not be aware of which licensees were trunking, and possibly causing interference. Given the number of licensees on a single channel in most areas, this uncertainty would be unacceptable.

PCIA proposes that the Commission permit existing licensees to request developmental trunking status on the specific channels for which they are already licensed. The request must have the concurrence of a certified frequency advisory committee for the

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primary authorization, which would dramatically change the relationship between the trunking licensee and the licensee experiencing interference.

[6]SBT at 20.

frequency[7] and should be served on co-channel licensees.[8] In this manner, co-channel licensees will be aware of which licensees are trunking and will be able to determine the source of any interference. During this period of developmental authorization, no new users would be added to the channel, but existing licensees could also seek developmental trunking authority.

At the end of the one-year developmental period, licensees should be able to request permanent authority for trunked operation. Again, the request should be with the consent of an applicable frequency advisory committee and should be served on co-channel licensees.

Since the developmental authorization is secondary, trunking operations must not interfere with other users. This type of authorization would be appropriate where co-channel licensees do not consent to the trunking. A developmental authorization presents a good compromise between protecting existing licensees, minimizing the ability of existing licensees to withhold consent without cause, and maximizing trunking opportunities.

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[7]There may be specific frequencies and specific situations where trunking without consent, even on a developmental basis, is unacceptable. Further, in the event of interference, frequency advisory committees must be able to fully carry out their responsibilities to help resolve post-licensing disputes. Therefore, coordinator review of such requests should be mandatory.

[8]The request should be accompanied by a certificate of service on co-channel licensees, similar to the Commission's requirement for 800/900 MHz short-spacing waivers. See, 47 C.F.R. 90.621.

PCIA does not support the proposals by ITA[9] and AMTA[10] that all frequency advisory committees impose a "freeze" when an applicant informs a coordinator that it will attempt to obtain concurrences, but before the application is filed. As explained in PCIA's Petition for Clarification, insincere parties could create "rolling freezes" by substituting another proposed applicant each time the window on the previous "freeze" was about to close.

A coordination "freeze" while the applicant seeks concurrences would also impact adjacent channels, and would create an impossible system to administer. Since virtually every incumbent licensee is presently authorized for a 25 kHz bandwidth system, channels adjacent to the proposed channel would also need to be frozen. The impact of this proposal would be to strand hundreds of existing licensees' authorizations, preventing each from being able to upgrade their systems.

PCIA believes that the developmental authorization concept solves many of the problems of a "freeze". The developmental authorization would prevent new users from being added to the channel during the developmental period. However, existing users would not be prevented from upgrading their own systems.[11] Also,

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[9]ITA Petition at 8.

[10]AMTA Petition at 7.

[11]An "existing licensee" would need to include those licensees on adjacent channels, because of the bandwidth overlap. Further, licensees to be considered in coordinating such trunking use will need to include former "offset" users who have chosen to upgrade their status to primary. However, former "offset" users who have chosen to remain secondary and remain on the channel will not need to be considered.

existing licensees would be able to demonstrate to co-channel licensees that the new system does not cause interference, which may lead to easing co-channel licensees' concerns and making the acquisition of concurrence easier.

II. THE POOL CONSOLIDATION PETITIONS MUST BE DISMISSED

The American Automobile Association ("AAA"), the Alarm Industry Communications Committee ("AICC"), the International Taxicab and Livery Association ("ITLA") and the American Trucking Association ("ATA") merely reiterate arguments which have been made numerous times over the past five years. The arguments include claims that only that one, particular coordinator understands the needs and uses of the businesses in their particular service,[12] the users in "their" service are different than others,[13] and "their" service is really public safety.[14]

The Commission has previously rejected these arguments. Rather than again address this issue, PCIA incorporates herein by reference five years of PCIA and NABER's Comments. Therein, the Commission will find a complete response on this issue. In summary, however, PCIA again points out that there are as many taxicab users on former Business Radio Service frequencies as on taxicab frequencies, as many tow trucks companies on Business Radio Service frequencies as there are on Automobile Emergency channels, etc. Further, coordinators other than those employed by ITLA are

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[12]ATA Petition at 4.

[13]ITLA Petition at 13-14; AICC Petition at 5.

[14]ITLA Comments at 18; ATA Comments at 5; AICC Comments at 2.

capable of recognizing that different types of technical operations (repeater, base/mobile, simplex, etc.) have different types of operational needs. Finally, every radio service has a public safety-related component, and none of the radio services in the combined pool is more important than another.[15]

III. LOW POWER CHANNEL POOLS

Hewlett-Packard Company ("HP") requests that the Commission "take responsibility" for designating the channels to be assigned to the low power pool, claiming that an "industry consensus" cannot be reached.[16] However, contrary to HP's contention, the frequency advisory committees submitted their consensus proposal to the Commission well in advance of the due date. The pool plan represents a tremendous effort on behalf of all of the participants, and represents a balancing of the various interests of every type of user.

PCIA encourages rapid consideration of the low power pool proposal submitted by the frequency advisory committees. Rapid consideration and adoption of the proposal will assist existing low power users in making decisions as to whether to migrate to other channels, or remain on their existing channels.[17]

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[15]It is indeed ironic that ATA goes to great lengths on page 6 of its Petition to argue that only it can understand the operational needs of trucking companies, since ATA's most experienced trucking coordinator is now a PCIA employee and is coordinating applications for all types of businesses.

[16]HP Petition at 2.

[17]PCIA looks forward to working with HP in identifying medical telemetry users frequency assignments and aiding such users in their channel choices.

IV. AMTA AND ITA "SAFE HARBOR TABLE" PETITIONS

AMTA and ITA have requested that the Commission reconsider the adoption of the "Safe Harbor Table" for determining permissible effective radiated power.[18] The Commission did not adopt the Safe Harbor Table as part of its most recent Report and Order. Rather, the Safe Harbor Table was adopted by the Commission in it Report and Order and Further Notice of Proposed Rule Making in 1995.[19] Therefore, the AMTA and ITA Petitions are impermissibly late-filed.

In addition, the Safe Harbor Table was adopted as the result of the recommendations of the Land Mobile Communications Council ("LMCC"), of which both AMTA and ITA are a part. It would seem inappropriate to request reconsideration of the Table without LMCC input, and before the Table has actually been put into effect. However, PCIA wishes to investigate further with AMTA and ITA the factual background for the need to revisit the Table and PCIA would hope to be able to provide the Commission with a more definitive opinion on PCIA's position on this issue at a later time.

V. COORDINATOR RESPONSIBILITY

SBT suggests numerous revisions to the Commission's coordination rules and policies. Many of these requests are outside the scope of this proceeding, and PCIA will address some of the other issues below.

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[18]AMTA Petition at 11; ITA Petition at 14.

[19]Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 92-235, 10 FCC Rcd 10076 (1995) at para. 69.

Essentially, SBT requests that the Commission "redefine" the relationship between the applicant and the coordinator. This issue is outside the scope of this proceeding, and therefore cannot be properly considered by the Commission in this phase of PR Docket No. 92-235. More importantly, however, the specifics of SBT's "request" represent an erroneous understanding of the purpose of the frequency coordination process.

SBT requests that the Commission state that the frequency advisory committee is an "agent" of the applicant, and therefore owes a fiduciary duty to the applicant.[20] The Commission has never previously made such a finding, and PCIA does not support its adoption now.

Prior to the adoption of the frequency coordination requirements in 1986, the frequency assignment process was plagued by so-called "field studies", which were usually prepared by the applicant's "agent". The Commission made the decision in 1986 to eliminate this process, and its rationale is equally applicable today.[21] By requiring that applications be forwarded to a neutral third party representative of the users of the service for frequency coordination, the Commission (with the blessing of Congress) ensured that existing users did not need to review every one of the tens of thousands of applications filed yearly.[22]

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[20]SBT Petition at 5.

[21]Report and Order, PR Docket No. 83-737, 60 RR 2d 41 (1986) at para. 62.

[22]PCIA disagrees with SBT's statement on pages 4 and 11 that the Second Report and Order "acknowledged that representativeness

Licensees can rely on the neutral third party for review of the application to ensure the assignment of the most appropriate frequency. SBT's "agent" designation request would take the land mobile industry back more than a decade, without any rationale.

SBT's statement that a frequency advisory committee would "sell out" an applicant is unfounded.[23] Despite SBT's claims, there is no difference in the coordinator/applicant relationship before the pool consolidation or after. As long the frequency advisory committee remains representative of a class of users of the frequencies being assigned, the user community will continue to have a check on the frequency coordination process, but not individual coordinations, because of the coordinator's neutrality. This neutrality is crucial to ensuring that the frequency coordination process does not retreat into the problematic process experienced prior to 1986.

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of a class of persons is no longer a requirement for the position of frequency coordinator". The Commission could not make such a determination, as the requirement of representativeness is Congressionally mandated. Conference Report No. 97-765, 97th Cong. 2nd Sess., August 19, 1982 at 53, reprinted in 1982 U.S. Code Cong. & Ad. News 2237. Rather, the joint pool concept adopted in this proceeding is no different than the multi-coordinator frequencies that already exist in the 150 MHz, 450 MHz, 470-512 MHz, and the 800 MHz General Category frequencies. In such frequency pools, each frequency advisory committee is representative of a portion of the users of the service. The Commission has never held that the frequency advisory committee must be representative of all of the users in the frequency pool.

[23]SBT Petition at 8.

VI. CONCLUSION

WHEREFORE, the Personal Communications Industry Association respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 19th day of June, 1997 sent via first class mail, postage prepaid, a copy of the foregoing Opposition and Comments to the following:

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